

STATE OF MICHIGAN
COURT OF APPEALS

ATWATER ENTERTAINMENT ASSOCIATES,
L.L.C., and VIVIAN CARPENTER,

UNPUBLISHED
April 22, 2010

Plaintiffs-Appellants,

v

JUDITH YOUNG DOSS,

No. 290425
Wayne Circuit Court
LC No. 08-115905-CZ

Defendant-Appellee.

Before: BANDSTRA, P.J., and BORRELLO and SHAPIRO, JJ.

PER CURIAM.

In this action for declaratory relief, plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Atwater Entertainment Associates, LLC (Atwater) indirectly owned a minority interest in the Motor City Casino in Detroit.¹ Plaintiff Vivian Carpenter is Atwater's managing agent. Defendant is the widow of Lawrence Doss, an owner of several membership units in Atwater. Lawrence Doss died intestate on October 28, 2001. In the probate proceedings related to the deceased's estate, there was a dispute over the ownership of seven of the Atwater membership units. Defendant alleged that she would clearly be the owner of the disputed units but for plaintiffs' alleged failure to maintain the records necessary to confirm or effectuate the transfer to her of those membership units. Plaintiffs brought this action for declaratory relief to determine whether defendant has a valid claim based on this alleged failure.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that the action was barred because plaintiffs lacked standing, that the matter was not ripe for adjudication, that there was no actual controversy, and that the court should use its discretion to conclude that the case was not appropriate for declaratory relief. The court ruled in defendant's favor:

¹ Atwater voluntarily dissolved on October 18, 2006, but has not completed winding up its affairs because of the continuing legal disputes.

I have read through all of this, and I have to admit that I went back and forth as to how I was going to decide this case. I tend to agree with defendant here. I do not believe that this is a case for declaratory action. I don't believe the issues are ripe. I don't believe there's an actual controversy. And based on my discretion, I don't believe this is a proper case for declaratory action. I don't think there's any actual injury. There's a possibility they could be sued which is a hypothetical. The only injury that's alleged is they can't wind down their affairs. I don't think that is sufficient for a declaratory action based on the case law and pleadings you have submitted.

Thus, the trial court determined this case was not suitable for declaratory relief because it rested on future contingent events. Specifically, the court seems to have concluded that because defendant had not yet filed suit against plaintiffs, there was no actual controversy. We disagree.

Declaratory judgment actions are permitted pursuant to MCR 2.605(A)(1). "In a declaratory judgment action, the trial court may declare the rights and other legal relations of an interested party," *Farm Bureau Ins Co v Abalos*, 277 Mich App 41, 43; 742 NW2d 624 (2007), but "[t]he existence of an 'actual controversy' is a condition precedent to invocation of declaratory relief." *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978). "[A]ctual controversy' exists where a declaratory judgment or decree is necessary to guide a plaintiff's future conduct in order to preserve his legal rights." *Id.* This does not preclude a court "from reaching issues before actual injuries or losses have occurred." *Id.* at 589. However, when the dispute is merely hypothetical, no actual controversy exists, and a court lacks jurisdiction to enter a declaratory judgment. *Citizens for Common Sense for in Gov't v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000).

We conclude that an actual controversy exists in this case. The question presented in this case, did plaintiffs' alleged actions with regard to the transfer of Atwater membership units result in damages to defendant, requires an adjudication of present rights on established facts. The resolution of this dispute does not call for speculation about hypothetical future events. Rather, the present facts indicate that plaintiffs and defendant have adverse interests and that plaintiffs are seeking guidance as to whether they have a liability to defendant so that they can wind up their affairs. Thus, the declaratory judgment requested in this case will "serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations." *Flint v Consumers Power Co*, 290 Mich 305, 310; 287 NW2d 475 (1939) (quotation marks and citations omitted). The fact that defendant has not filed suit is simply not determinative of whether there is an actual controversy in this case.

Furthermore, even if we were inclined to conclude that there was no actual controversy, "if a case has progressed to the point where a traditional action for damages or for an injunction could be maintained, declaratory judgment will not be denied for lack of an actual controversy." 3 Longhofer, Michigan Court Rules Practice (5th ed), § 2605.3, p 386. Because it is clear that defendant's allegations against plaintiffs have reached a point where defendant could file a suit for damages against plaintiffs, declaratory judgment was permissible.

As an alternative basis for upholding the trial court's decision, defendant argues that plaintiffs lack standing because Atwater's former members are the only ones who might be injured if defendant ultimately files suit. It is true that Atwater's former members arguably

suffer the most from Atwater's inability to make a final distribution. However, Atwater and Carpenter also remain in juridical limbo. This limbo forces Atwater to retain monies that would otherwise be distributed. Further, plaintiffs clearly have an interest in ensuring that they prevail in the declaratory action so that these retained funds are not lost to defendant. We conclude that plaintiffs have standing because the injuries they allege are concrete and traceable to defendant's failure to act and because it is likely the injuries will be redressed by favorable decision in this case. Thus, plaintiffs have a demonstrated "interest in the outcome that will ensure sincere and vigorous advocacy." *Associated Builders & Contractors v Dep't of Consumer & Industry Services Director*, 472 Mich 117, 125; 693 NW2d 374 (2005).

The fact that the trial court had jurisdiction to hear this case does not, however, resolve the dispute because the decision to grant declaratory relief rests within the trial court's discretion. *PT Today, Inc v Comm'r of the Office of Financial & Ins Services*, 270 Mich App 110, 127; 715 NW2d 398 (2006), citing MCR 2.605. Under this deferential standard of review, "a reviewing court must affirm the trial court's decision even if a reasonable person might differ with the trial court in its decision to withhold relief." *Id.* at 129.

"The declaratory judgment rule was intended and has been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people." *Shavers*, 402 Mich at 588. Nonetheless, the rule is written permissively such that "a Michigan court of record *may* declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A)(1) (emphasis added). Thus, a court is not required to grant declaratory relief simply because it has the power to grant declaratory relief. *PT Today, Inc*, 270 Mich App at 126-127.

In this case, the court referenced its discretionary power when it granted defendant's motion for summary disposition. Yet for the trial court to have properly invoked its discretionary authority, it must have recognized that it had the power to hear the case, but decided not to do so. From the trial court's ruling, it is not clear to us whether the court understood it had the power to hear the case. The court's ruling lumps together its discretionary authority with its jurisdictional findings on the "actual controversy" question. The court seems to be saying that because plaintiffs had not been sued by defendant, any injury was only hypothetical and, thus, it was going to use its discretionary authority to refuse to hear the case. As previously discussed, the trial court erred in finding that any injury was only hypothetical. An error of law can lead to an abuse of discretion. *Donkers v Kovach*, 277 Mich App 366, 368-369; 745 NW2d 154 (2007). We conclude the trial court abused its discretion in holding that this was not a proper case for declaratory relief because the court's decision was based on a misapprehension of the law.

We reverse the trial court's decision granting summary disposition in favor of defendant and remand this case to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro